IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8308 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M M SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8308 of 2004

MR MUKUL SINHA for Petitioner No. 1

Mr. Dipen A. Desai, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/10/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Deputy Secretary, Education Department, State of Gujarat, dated 6.7.2004 in refusing to grant No Objection Certificate for the purpose of establishing Graduate Basic Training

Course College (GBTC).

2. It is the case of the petitioner that as the petitioner trust wanted to establish GBTC College they were required to obtain No Objection Certificate from the State Government and accordingly they had applied for No Objection Certification to the State Government. It appears that the State Government refused to grant No Objection Certificate by order dated 16th January 2004 and therefore the petitioner preferred Special Civil Application No. 2757 of 2004 which came to be disposed of by this Court [Coram: Mr. K.A. Mehta, J.]. This Court by order dated 26.4.2004 quashed and set aside the order dated 16th January 2004 and directed the authority to pass a speaking order afresh in accordance with law. Thereafter the impugned order dated 6.7.2004 came to be passed by the State Government by which the State Government refused to grant No Objection Certificate for establishing GBTC College which is challenged in the present Special Civil Application.

3. Shri Mukul Sinha, learned advocate appearing for the petitioner has submitted that in fact the petitioner Trust had applied for grant of No Objection Certificate for establishing GBTC College in the Kheda District. However, the State Government has considered the application of the petitioner as if the petitioner wants to estblish GBTC College in Panchmahals District which clearly shows non-application of mind on the part of State Government. He has also submitted that as such the petitioner Trust has already complied with all the conditions which are required for the purpose of No Objection Certificate and the petitioner Trust has also necessary infrastructure for the purpose of establishing GBTC College and still the No Objection Certificate is not granted and therefore requested to allow the present Special Civil Application.

4. Shri Dipen A. Desai, learned AGP appears on behalf of State Government. No affidavit-in-reply has been filed on behalf of the respondent. Shri Desai is not in position to defend the order dated 6th July 2004 more particularly in view of the fact that though the application of the petitioner for No Objection Certificate was for Kheda District the application of the petitioner has been rejected considering the case of the petitioner Trust as if the petitioner Trust wanted to establish GBTC College in Panchmahals District. So far as the contention on behalf of the petitioner to the effect that the petitioner Trust has already complied with all the conditions which are required for the

purpose of establishing GBTC College and for No Objection Certificate is concerned, the same is not disputed by the respondent by way of affidavit-in-reply which is not filed by the respondent.

5. The respondent authority has considered the position with regard to Panchmahals District. In view of the fact that the application of the petitioner for NOC was for establishing GBTC College for Kheda District and the respondent has rejected the application for NOC asked for by the petitioner as if the petitioner has applied for NOC for establishing GBTC college in Panchmahals District which shows clear-cut non-application of mind on the part of the respondent, the order passed by the respondent is required to be quashed and set aside. Under the circumstances, the impugned order being absolutely illegal is hereby quashed and set aside. The respondent authority is directed to consider the case of the petitioner for grant of No Objection Certificate for establishing GBTC College in Kheda District as per their application and if all the conditions are satisfied and if nothing is adverse then the respondent authority is directed to grant No Objection Certificate to the petitioner Trust for establishing GBTC College in Kheda District. Such an exercise is required to be done as early as possible preferably within the period of four weeks from the date of receipt of this order.

6. In the facts and circumstances, the petition is required to be allowed with costs which is quantified at Rs. 1,500 and the respondent is directed to make payment of Rs. 1500 to the petitioner Trust within the period of 4 weeks from today. It is made clear that the aforesaid amount of Rs.1500 should be recovered from the salary of the Officer who has passed the impugned order dated 6th July 2004 and the respondent is directed to submit the compliance Report to this Court.

7. Rule is made absolute accordingly to the aforesaid extent.

[M.R. Shah, J.]

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